

ANDERSON, MCPHARLIN & CONNERS LLP

LAWYERS

707 WILSHIRE BOULEVARD, SUITE 4000
LOS ANGELES, CALIFORNIA 90017-3623

1 GARY J. VALERIANO (Bar No. 89644)
gjb@amclaw.com

2 MARK J. KRONE (Bar No. 219806)
mk@amclaw.com

3 ANDERSON, MCPHARLIN & CONNERS LLP
4 707 Wilshire Boulevard
Suite 4000

Los Angeles, California 90017-3623

5 TELEPHONE: (213) 688-0080 ♦ FACSIMILE: (213) 622-7594

6 Attorneys for Defendant
FEDERAL INSURANCE COMPANY

8 UNITED STATES DISTRICT COURT

9 CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

10
11 INSCO INSURANCE SERVICES,
12 INC., a California corporation;
13 DEVELOPERS SURETY AND
INDEMNITY COMPANY, an Iowa
Corporation ,

14
15 Plaintiffs,

16 vs.

17 FEDERAL INSURANCE COMPANY,
18 an Indiana corporation; and DOES 1
through 10,

19 Defendants.
20

Case No. SACV15-01702 DOC (KESx)

**ORDER RE
STIPULATED PROTECTIVE
ORDER**

FPTC: September 11, 2017
Trial: September 26, 2017

21 1. A. PURPOSES AND LIMITATIONS

22 Discovery in this action is likely to involve production of confidential,
23 proprietary, or private information for which special protection from public
24 disclosure and from use for any purpose other than prosecuting this litigation may
25 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
26 enter the following Stipulated Protective Order. The parties acknowledge that this
27 Order does not confer blanket protections on all disclosures or responses to
28 discovery and that the protection it affords from public disclosure and use extends

1 only to the limited information or items that are entitled to confidential treatment
2 under the applicable legal principles. The parties further acknowledge, as set forth in
3 Section 12.3, below, that this Stipulated Protective Order does not entitle them to
4 file confidential information under seal; Civil Local Rule 79-5 sets forth the
5 procedures that must be followed and the standards that will be applied when a party
6 seeks permission from the court to file material under seal.

7 **B. GOOD CAUSE STATEMENT**

8 This action is likely to involve confidential trade secrets, customer and
9 pricing lists, employee information, personnel records, and other valuable research,
10 development, commercial, financial, technical and/or proprietary information for
11 which special protection from public disclosure and from use for any purpose other
12 than prosecution of this action is warranted. Such confidential and proprietary
13 materials and information consist of, among other things, confidential business or
14 financial information pertaining to commercially sensitive internal procedures and
15 corporate governance; commercially sensitive insurance and surety claims
16 communications and reserve information; personal and confidential information
17 pertaining to persons who are not parties to this litigation, such as former
18 employees' personnel files and third parties' project details as well as claims on
19 insurance and surety bonds; information regarding confidential business practices;
20 privileged and protected information regarding litigation in other lawsuits, as well as
21 other confidential research, development, or commercial information (including
22 information implicating privacy rights of third parties), information otherwise
23 generally unavailable to the public, or which may be privileged or otherwise
24 protected from disclosure under state or federal statutes, court rules, case decisions,
25 or common law. Accordingly, to expedite the flow of information, to facilitate the
26 prompt resolution of disputes over confidentiality of discovery materials, to protect
27 information the parties are or may be entitled to keep confidential, to ensure that the
28 parties are permitted reasonable necessary uses of such material in preparation for

1 and in the conduct of trial, to address their handling at the end of the litigation, and
 2 to serve the ends of justice, a protective order for such information is justified in this
 3 matter. It is the intent of the parties that information will not be designated as
 4 confidential for tactical reasons and that nothing be so designated without a good
 5 faith belief that it has been maintained in a confidential, non-public manner, and
 6 there is good cause why it should not be part of the public record of this case.

7 **2. DEFINITIONS**

8 2.1 Action: This pending federal lawsuit titled *Insko Insurance Services,*
 9 *Inc., et al., v. Federal Insurance Company*, United States District Court for the
 10 Central District of California, Case No. SACV15-01702 DOC (KESx).

11 2.2 Challenging Party: a Party or Non-Party that challenges the designation
 12 of information or items under this Order.

13 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
 14 how it is generated, stored or maintained) or tangible things that qualify for
 15 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
 16 the Good Cause Statement.

17 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
 18 their support staff).

19 2.5 Designating Party: a Party or Non-Party that designates information or
 20 items that it produces in disclosures or in responses to discovery as
 21 “CONFIDENTIAL.”

22 2.6 Disclosure or Discovery Material: all items or information, regardless
 23 of the medium or manner in which it is generated, stored, or maintained (including,
 24 among other things, testimony, transcripts, and tangible things), that are produced or
 25 generated in disclosures or responses to discovery in this matter.

26 2.7 Expert: a person with specialized knowledge or experience in a matter
 27 pertinent to the litigation who has been retained by a Party or its counsel to serve as
 28 an expert witness or as a consultant in this Action.

1 2.8 House Counsel: attorneys who are employees of a party to this Action
2 or are responsible for the conduct of the litigation and negotiations related thereto,
3 and their staff. House Counsel does not include Outside Counsel of Record or any
4 other outside counsel.

5 2.9 Non-Party: any natural person, partnership, corporation, association, or
6 other legal entity not named as a Party to this action.

7 2.10 Outside Counsel of Record: attorneys who are not employees of a party
8 to this Action but are retained to represent or advise a party to this Action and have
9 appeared in this Action on behalf of that party or are affiliated with a law firm which
10 has appeared on behalf of that party, and includes support staff.

11 2.11 Party: any party to this Action, including all of its officers, directors,
12 employees, consultants, retained experts, and Outside Counsel of Record (and their
13 support staffs).

14 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
15 Discovery Material in this Action.

16 2.13 Professional Vendors: persons or entities that provide litigation support
17 services (e.g., photocopying, videotaping, translating, preparing exhibits or
18 demonstrations, and organizing, storing, or retrieving data in any form or medium)
19 and their employees and subcontractors.

20 2.14 Protected Material: any Disclosure or Discovery Material that is
21 designated as "CONFIDENTIAL."

22 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
23 from a Producing Party.

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1 3. SCOPE

2 The protections conferred by this Stipulation and Order cover not only
 3 Protected Material (as defined above), but also (1) any information copied or
 4 extracted from Protected Material; (2) all copies, excerpts, summaries, or
 5 compilations of Protected Material; and (3) any testimony, conversations, or
 6 presentations by Parties or their Counsel that might reveal Protected Material.

7 Any use of Protected Material at trial shall be governed by the orders of the
 8 trial judge. This Order does not govern the use of Protected Material at trial.

9 4. DURATION

10 Even after final disposition of this litigation, the confidentiality obligations
 11 imposed by this Order shall remain in effect until a Designating Party agrees
 12 otherwise in writing or a court order otherwise directs. Final disposition shall be
 13 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
 14 or without prejudice; and (2) final judgment herein after the completion and
 15 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
 16 including the time limits for filing any motions or applications for extension of time
 17 pursuant to applicable law.

18 5. DESIGNATING PROTECTED MATERIAL

19 5.1 Exercise of Restraint and Care in Designating Material for Protection.
 20 Each Party or Non-Party that designates information or items for protection under
 21 this Order must take care to limit any such designation to specific material that
 22 qualifies under the appropriate standards. The Designating Party must designate for
 23 protection only those parts of material, documents, items, or oral or written
 24 communications that qualify so that other portions of the material, documents,
 25 items, or communications for which protection is not warranted are not swept
 26 unjustifiably within the ambit of this Order.

27 Mass, indiscriminate, or routinized designations are prohibited. Designations
 28 that are shown to be clearly unjustified or that have been made for an improper

1 purpose (e.g., through a finding of the court of a purpose unnecessarily to encumber
2 the case development process or to impose unnecessary expenses and burdens on
3 other parties) may expose the Designating Party to sanctions.

4 If it comes to a Designating Party's attention that information or items that it
5 designated for protection do not qualify for protection, that Designating Party must
6 promptly notify all other Parties that it is withdrawing the inapplicable designation.

7 5.2 Manner and Timing of Designations. Except as otherwise provided in
8 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
9 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
10 under this Order must be clearly so designated before the material is disclosed or
11 produced.

12 Designation in conformity with this Order requires:

13 (a) for information in documentary form (e.g., paper or electronic
14 documents, but excluding transcripts of depositions or other pretrial or trial
15 proceedings), that the Producing Party affix at a minimum, the legend
16 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
17 contains protected material. If only a portion or portions of the material on a page
18 qualifies for protection, the Producing Party also must clearly identify the protected
19 portion(s) (e.g., by making appropriate markings in the margins).

20 A Party or Non-Party that makes original documents available for inspection
21 need not designate them for protection until after the inspecting Party has indicated
22 which documents it would like copied and produced. During the inspection and
23 before the designation, all of the material made available for inspection shall be
24 deemed "CONFIDENTIAL." After the inspecting Party has identified the
25 documents it wants copied and produced, the Producing Party must determine which
26 documents, or portions thereof, qualify for protection under this Order. Then, before
27 producing the specified documents, the Producing Party must affix the
28 "CONFIDENTIAL legend" to each page that contains Protected Material. If only a

1 portion or portions of the material on a page qualifies for protection, the Producing
2 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
3 markings in the margins). A party may mark the entirety of a document as
4 “CONFIDENTIAL,” rather than individual parts, where the burden of designating
5 only certain parts outweighs the benefit.

6 (b) for testimony given in depositions that the Designating Party identify
7 the Disclosure or Discovery Material on the record, before the close of the
8 deposition all protected testimony.

9 (c) for information produced in some form other than documentary and for
10 any other tangible items, that the Producing Party affix in a prominent place on the
11 exterior of the container or containers in which the information is stored the legend
12 “CONFIDENTIAL.” If only a portion or portions of the information warrants
13 protection, the Producing Party, to the extent practicable, shall identify the protected
14 portion(s).

15 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
16 failure to designate qualified information or items does not, standing alone, waive
17 the Designating Party’s right to secure protection under this Order for such material.
18 Upon timely correction of a designation, the Receiving Party must make reasonable
19 efforts to assure that the material is treated in accordance with the provisions of this
20 Order.

21 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

22 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
23 designation of confidentiality at any time that is consistent with the Court’s
24 Scheduling Order.

25 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
26 resolution process under Local Rule 37.1 et seq.

27 6.3 The burden of persuasion in any such challenge proceeding shall be on
28 the Designating Party. Frivolous challenges, and those made for an improper

1 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
2 parties) may expose the Challenging Party to sanctions. Unless the Designating
3 Party has waived or withdrawn the confidentiality designation, all parties shall
4 continue to afford the material in question the level of protection to which it is
5 entitled under the Producing Party's designation until the Court rules on the
6 challenge.

7 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

8 7.1 Basic Principles. A Receiving Party may use Protected Material that is
9 disclosed or produced by another Party or by a Non-Party in connection with this
10 Action only for prosecuting, defending, or attempting to settle this Action. Such
11 Protected Material may be disclosed only to the categories of persons and under the
12 conditions described in this Order. When the Action has been terminated, a
13 Receiving Party must comply with the provisions of section 13 below (FINAL
14 DISPOSITION).

15 Protected Material must be stored and maintained by a Receiving Party at a
16 location and in a secure manner that ensures that access is limited to the persons
17 authorized under this Order.

18 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
19 otherwise ordered by the court or permitted in writing by the Designating Party, a
20 Receiving Party may disclose any information or item designated
21 "CONFIDENTIAL" only to:

22 (a) the Receiving Party's Outside Counsel of Record in this Action, as well
23 as employees of said Outside Counsel of Record to whom it is reasonably necessary
24 to disclose the information for this Action;

25 (b) the officers, directors, and employees (including House Counsel) of the
26 Receiving Party to whom disclosure is reasonably necessary for this Action;

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(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the court and its personnel;

(e) court reporters and their staff;

(f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(h) during their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

**8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
PRODUCED IN OTHER LITIGATION**

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party’s confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party, if requested.

(c) If the Non-Party fails to seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure

1 may be established in an e-discovery order that provides for production without
 2 prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar
 3 as the parties reach an agreement on the effect of disclosure of a communication or
 4 information covered by the attorney-client privilege or work product protection, the
 5 parties may incorporate their agreement in the stipulated protective order submitted
 6 to the court.

7 **12. MISCELLANEOUS**

8 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
 9 person to seek its modification by the Court in the future.

10 12.2 Right to Assert Other Objections. By stipulating to the entry of this
 11 Protective Order no Party waives any right it otherwise would have to object to
 12 disclosing or producing any information or item on any ground not addressed in this
 13 Stipulated Protective Order. Similarly, no Party waives any right to object on any
 14 ground to use in evidence of any of the material covered by this Protective Order.

15 12.3 Filing Protected Material. A Party that seeks to file under seal any
 16 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
 17 only be filed under seal pursuant to a court order authorizing the sealing of the
 18 specific Protected Material at issue. If a Party's request to file Protected Material
 19 under seal is denied by the court, then the Receiving Party may file the information
 20 in the public record and will use best efforts to limit production or filing of
 21 Protected Material, unless otherwise instructed by the court.

22 **13. FINAL DISPOSITION**

23 After the final disposition of this Action, as defined in paragraph 4, within 60
 24 days of a written request by the Designating Party, each Receiving Party must return
 25 all Protected Material to the Producing Party or destroy such material. As used in
 26 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
 27 summaries, and any other format reproducing or capturing any of the Protected
 28 Material. Whether the Protected Material is returned or destroyed, the Receiving

ANDERSON, MCPHARLIN & CONNERS LLP

LAWYERS

707 WILSHIRE BOULEVARD, SUITE 4000
LOS ANGELES, CALIFORNIA 90017-3623

1 Party must submit a written certification to the Producing Party (and, if not the same
2 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
3 (by category, where appropriate) all the Protected Material that was returned or
4 destroyed and (2) affirms that the Receiving Party has not retained any copies,
5 abstracts, compilations, summaries or any other format reproducing or capturing any
6 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
7 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
8 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
9 reports, attorney work product, and consultant and expert work product, even if such
10 materials contain Protected Material. Any such archival copies that contain or
11 constitute Protected Material remain subject to this Protective Order as set forth in
12 Section 4 (DURATION).

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14. Any violation of this Order may be punished by any and all appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: February 28, 2017 KILPATRICK TOWNSEND & STOCKTON, LLP

By: /s/ Heather W. Habes

Mary Craig Calkins

Daniel H. Rylaarsdam

Heather W. Habes

Attorneys for Attorneys for Plaintiffs INSCO

INSURANCE SERVICES, INC. and

DEVELOPERS SURETY AND INDEMNITY
COMPANY

DATED: February 28, 2017 ANDERSON, McPHARLIN & CONNERS LLP

By: /s/ Mark J. Krone

Gary J. Valeriano

Mark J. Krone

Attorneys for FEDERAL INSURANCE
COMPANY

Pursuant to Local Rule 5-4.3.4(a)(2)(i), I hereby attest, under penalty of perjury, that Heather W. Habes concurs in this filing's content and has authorized me to file this document.

/s/ Mark J. Krone

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

Karen E. Scott

DATED: March 01, 2017

Karen E. Scott

United States Magistrate Judge

ANDERSON, MCPHARLIN & CONNERS LLP

LAWYERS

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LOS ANGELES, CALIFORNIA 90017-3623

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty
of perjury that I have read in its entirety and understand the Stipulated Protective
Order that was issued by the United States District Court for the Central District of
California on [date] in the case of *Insko Insurance Services, Inc., et al., v. Federal
Insurance Company*, United States District Court for the Central District Of
California, Case No. SACV15-01702 DOC (KESx). I agree to comply with and to
be bound by all the terms of this Stipulated Protective Order and I understand and
acknowledge that failure to so comply could expose me to sanctions and punishment
in the nature of contempt. I solemnly promise that I will not disclose in any manner
any information or item that is subject to this Stipulated Protective Order to any
person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
for the Central District of California for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action. I hereby appoint _____ [print
or type full name] of _____ [print or type
full address and telephone number] as my California agent for service of process in
connection with this action or any proceedings related to enforcement of this
Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____